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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re I.C. et al., Persons Coming Under the
Juvenile Court Law.

MERCED COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

MICHAEL C.,

Defendant and Appellant.

F062993

(Super. Ct. No. JP000131)

In re I.C. et al., Persons Coming Under the
Juvenile Court Law.

MERCED COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

E.C.,

Defendant and Appellant.

F063210

(Super. Ct. No. JP000131)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Merced County. John D. Kiriara,
Judge.

Gino de Solenni, under appointment by the Court of Appeal, for Defendant and
Appellant Michael C.

* Before Kane, Acting P.J., Poochigian, J., and Franson, J.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant E.C.

James N. Fincher, County Counsel, and Shari L. Damon, Deputy County Counsel, for Plaintiff and Respondent.

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Parents Michael C. and E. C. appeal from an order terminating their parental rights (Welf. & Inst. Code, § 366.26) to their eight- and nine-year-old sons (the boys).¹ Mother contends the juvenile court found compelling reasons existed not to terminate parental rights, but erroneously disregarded its finding. According to mother, there was substantial evidence of a beneficial relationship between her and the boys (§ 366.26, subd. (c)(1)(B)(i)) to support the court's finding and, therefore, this court should reverse the termination order. Father joins in mother's argument. On review, we disagree and affirm.

PROCEDURAL AND FACTUAL HISTORY

In January 2010, the juvenile court adjudged the boys juvenile dependents and removed them from parental custody due to domestic violence in the father's home and both parents' substance abuse. Despite 12 months of reasonable reunification services, the parents neither regularly participated in nor satisfactorily completed the court-ordered treatment program. Father's progress was "non-existent," while mother's progress was "marginal." At best, mother maintained regular visitation with the boys; the court had ordered a minimum of once-a-month supervised visits. Consequently, the juvenile court terminated reunification services for the parents in January 2011 and set a hearing pursuant to section 366.26 to select and implement a permanent plan for the boys.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Prior to the permanency planning hearing, respondent Merced County Human Services Agency (agency) prepared a “366.26 WIC Report” in which it recommended the court terminate parental rights. According to the agency, the boys were adoptable and were likely to be adopted by their relative care providers, with whom the agency had placed the boys for approximately one year. Because the likelihood of the boys’ adoption is undisputed on appeal, we choose not to summarize that evidence here.

The agency also reported on the contact between the boys and the parents. Since their detention in late 2009, the boys had maintained regular, supervised visits with their mother. Prior to their detention, the boys lived with their father, whose whereabouts became unknown for at least part of the proceedings.

There was one social worker who primarily supervised the visits between the boys and mother. According to that social worker’s contact notes, the visits went well. The children were excited to see mother, who brought snacks for them. She would ask the children about school and how things were going with their relative care providers. Nevertheless, at the end of the visits, the boys were easily able to say good-bye and showed no strong emotions.

In addition, the agency reported the boys understood the concept of adoption and reported it would be good if their relative care providers adopted them. The boys were happy and felt like the relative care providers had welcomed them into their family. It was the agency’s position that the benefit of adoption outweighed the relationship the boys had with their parents.

At the permanency planning hearing, both mother and father argued termination would be detrimental to the boys based on their visitation and continuing parent-child relationship. Mother testified she raised the boys until she and their father separated years earlier. When she did care for the boys, she admittedly was using methamphetamine. In her opinion, she and the boys were very close and, despite the

boys' detention in 2009, her relationship with them remained strong. Mother believed the boys would benefit from a continued relationship with her because she and the boys have a "tight" relationship. When the boys cannot talk to anyone else, they will talk to her and "get things off their chests." It had been hard on them not being able to talk to her every day.

The juvenile court rejected the parents' argument and, having found the boys were likely to be adopted, terminated parental rights. The juvenile court found father's visitation with the children had been "sporadic" while mother had maintained a closer relationship through regular visits that had "gone fairly well." So, mother's situation posed a "more difficult case[.]" However, the benefits of adoption outweighed the evidence of mother's visitation and relationship with the boys. The court then added the following:

"There's certainly compelling reasons for not terminating mother's parental rights. But under the circumstances, I just think that for the best interest of the children suggests that mother has failed to overcome with her evidence all the reasons why their rights should be terminated and that the children should be freed for adoption."

DISCUSSION

Once a juvenile dependency case reaches the permanency planning stage, the statutory presumption is that termination is in an adoptable child's best interests and, therefore, not detrimental. (§ 366.26, subd. (b); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1344.) It is the parent's burden to show that termination would be detrimental under one of the statutory exceptions. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) The beneficial relationship exception in section 366.26, subdivision (c)(1)(B)(i), involves a two-part test; did the parent maintain regular visitation and contact with the child, and would the child benefit from continuing the relationship.

For the beneficial relationship exception to apply,

“the parent-child relationship [must] promote the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) A juvenile court must therefore: ‘balance ... the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ (*Id.* at p. 575.)” (*In re Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1342.)

When a court rejects a detriment claim and terminates parental rights, the appellate issue is whether the juvenile court abused its discretion in so doing. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) The decision is not reviewed, as mother argues and father joins, for substantial evidence to prove a negative, i.e. that termination would not be detrimental.

To conclude the juvenile court abused its discretion, the proof offered must have been uncontradicted and unimpeached so that discretion could be exercised only in one way, compelling a finding in favor of the appellant as a matter of law. (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Based on our review of the record, we conclude the juvenile court properly exercised its discretion in rejecting mother’s argument.

There was undisputed evidence that mother maintained regular contact and visitation with the boys at least during their dependency and those visits went well. However, mother had to demonstrate more than pleasant visits or loving contact to compel a finding that termination would be detrimental to the boys. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954.) In this regard, there was only mother’s opinion testimony that the boys would benefit from a continuing relationship with her. Given

mother's self-interest in the outcome she advocated, the juvenile court was not bound by her opinion.

In addition, mother presented no evidence that the boys would be greatly harmed if rights were terminated. (*In re Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1342.) Furthermore, the juvenile court had before it undisputed evidence that at the end of those visits, the boys were easily able to say good-bye to mother and showed no strong emotions. The boys, who understood the concept of adoption, also supported adoption by their relative care providers. Thus, the evidence before the juvenile court did not compel an outcome in mother's favor.

To the extent mother claims the juvenile court erred based on its choice of words that there were compelling reasons for not terminating mother's parental rights, we are not persuaded. Read in its context, the juvenile court's remark was merely part of the weighing process that the juvenile court properly undertook in evaluating the boys' best interest. We do not interpret the court's word selection as an express finding that mother showed that the boys would benefit from continuing their relationship with her for purposes of section 366.26, subdivision (c)(1)(B)(i). In this regard, we further observe that the juvenile court's reasoning is not a matter for this court's review. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.) It is judicial action and not judicial reasoning which is the proper subject of appellate review. (*El Centro Grain Co. v. Bank of Italy, Etc.* (1932) 123 Cal.App. 564, 567.)

As is so with many juvenile dependency cases, there is a certain dolefulness that characterizes the family circumstances and the challenge faced by the juvenile court in rendering momentous decisions affecting the relationship between parents and their children—and the quality of their lives to follow. The juvenile dependency system is guided by law that, hopefully, reflects rationality and predictability to all of those affected persons. At the same time, there must be a level of discretion that takes adequate

account of the very special familial interests involved. Of course, the best interests of the children are of paramount significance. Their preferences are a factor when considering such principles as the beneficial relationship exception.

The juvenile court stated: “There’s certainly compelling reasons for not terminating mother’s parental rights,” yet proceeded to hold that it was in the best interest of the boys to have parental rights terminated in favor of adoption by their relative care providers with whom the boys were residing and who expressed love and affection for the children and desire to adopt them. The court acknowledged that mother had done much to demonstrate her affection for the boys and they, in turn, displayed a positive relationship with her.

It is ironic that the court’s recognition of the challenge presented by certain juvenile cases and his use of the expression, “compelling reasons,” would be argued to be a basis for reversal under the circumstances. The juvenile court’s rulings in such matters should be characterized by a degree of circumspection and contemplation. The harder cases do not have easy answers. We find no fault in the court’s determination and laud its forthrightness.

DISPOSITION

The order terminating parental rights is affirmed.